

CHAPTER VII. COMPLIANCE WITH BASIC PILOT PROCEDURES

This chapter explores the extent to which employers, employees, and the Federal Government are complying with the Basic Pilot procedures. The evaluation team compared actual practices in participating establishments to the requirements and responsibilities detailed in the Memorandum of Understanding (MOU), the document that was signed by the employer and representatives of SSA and INS before pilot implementation to assure compliance by all parties.

A. EMPLOYER COMPLIANCE

Since most employers participating in the Basic Pilot volunteered, it is likely that their rate of compliance is higher and that their views of the pilot are more positive than would be expected if a similar program were implemented on a larger scale or made mandatory for some employers. This section examines employer compliance with the following Basic Pilot procedures:

- The employer should post the Basic Pilot poster in a location visible to job applicants, to inform them of the establishment's participation in the pilot program.
- The employer should not use the pilot system for pre-employment screening of job applicants or to support any unlawful employment practice (i.e., verification of work authorization for employees other than new hires).
- If an employee receives a tentative nonconfirmation from the system, the employer should inform the employee of his/her right to contest the tentative nonconfirmation and to contact SSA or INS about resolving the work-authorization problem.

As explained in Chapter I, these procedures are intended to decrease the likelihood of discrimination and/or the violations of fair information practices. This chapter examines the question of whether employers followed these procedures. Chapters VIII and IX examine the implications of noncompliance for fair information practices and discrimination.

1. INFORMING EMPLOYEES ABOUT PARTICIPATION IN THE BASIC PILOT

Establishments participating in the Basic Pilot are required to post the program notice supplied by INS in a prominent place where job applicants can easily see it. Based on observations by interviewers who visited pilot employers on-site,⁷⁴ only 50 percent of

⁷⁴ In cases where the interviewer was unable to observe the poster (e.g., because he/she was at another, distant location), the employer was asked about its location and the response was recorded in the appropriate categories.

establishments complied with this requirement. Thirty-five percent of establishments posted the notice in areas where it was unlikely to be seen by applicants or did not post it at all (see Exhibit VII-1). In the employee interviews, only 26 percent of employees recalled seeing the poster when they applied for their job. Thus, many employers have not been fulfilling their responsibility to inform job applicants of their participation in the Basic Pilot program through prominent placement of the participation notice.

Exhibit VII-1: Location of Basic Pilot Notices at Employment Sites

Location of Notices	Percent of Employers
Where they would be easily noticed by applicants	50
Where they may be noticed by applicants	14
Where it was unlikely for them to be noticed by applicants	7
Not posted in the area	29
Other	1

SOURCE: On-Site Employer Survey

2. RESTRICTIONS ON USE OF THE BASIC PILOT COMPUTER SYSTEM TO SCREEN EMPLOYEES

On enrolling in the Basic Pilot program, employers sign an MOU saying that they will use the verification system for all employees hired after the establishment begins using the system and will not use it for job applicants, employees hired before the start of the Basic Pilot, or anyone else who is not a newly hired employee. By comparing information from the Basic Pilot transaction database with the I-9 forms sampled during employer site visits and with employee interview data, the evaluation team attempted to detect these prohibited uses of the Basic Pilot system.

a. PRE-EMPLOYMENT SCREENING OF JOB APPLICANTS

The Basic Pilot program prohibits pre-employment screening because this practice does not allow potential employees to contest a tentative nonconfirmation of work authorization and is likely to lead to discrimination. This is especially important because the databases against which work authorization is verified are not necessarily complete, accurate, and up-to-date. Thus, pre-employment screening is likely to result in some work-authorized employees being unfairly denied employment.

However, many employers do not like this provision of the MOU. During stakeholder meetings, representatives from employer groups said that employers would prefer a verification system in which they determine work authorization before hiring employees. Under such a system, employers would avoid the potential costs of hiring and training employees who turn out to be unauthorized to work. It is, therefore, not surprising to find some employers ignoring the requirement to use the Basic Pilot program only after the employee is hired.

Ten percent of pilot employees verified using the Basic Pilot system reported that they were not offered a job by the pilot employer. This suggests that some employers may be using the Basic Pilot system to prescreen job applicants. This practice seems to be more prevalent among temporary help services (18 percent) than among other employers (5 percent).⁷⁵ In some of these cases, the temporary agencies and help-supply services may have been operating correctly, since they may “hire” employees without giving them an actual assignment.

b. SELECTIVE SCREENING OF NEWLY HIRED EMPLOYEES

If employers verified work authorization for only a subset of newly hired employees, the effectiveness of the Basic Pilot program would be compromised. If the selection criterion were based on citizenship or foreign birth, selective screening would also be discriminatory. By comparing the sampled I-9 forms archived at the establishments to the records on the transaction database, the evaluation team found that approximately one-quarter (24 percent) of the employees with sampled I-9 forms were not found in the transaction database.⁷⁶ However, comparison of Form I-9 data with information on the transaction database indicates little difference in citizenship attestation between employees whose I-9 forms were verified through the Basic Pilot system (62 percent U.S. citizens) and those whose forms were not verified through the system (64 percent U.S. citizens). If employers were selectively screening employees on the basis of their attributes, it is likely that the criterion used for selection would be either citizenship attestation or another characteristic (such as being foreign-born or having a foreign appearance) that is strongly associated with citizenship status. It is therefore likely that the incomplete entry of I-9 forms into the database is attributable to other, presumably more benign, reasons, such as delays in implementing the Basic Pilot program or suspension of the pilot process during some period.

c. SCREENING OF EXISTING EMPLOYEES

When the hire dates on sampled I-9 forms were compared with the date the employer signed the MOU, there was no indication that employers used the Basic Pilot system to verify employees who had been hired before the employer enrolled in the pilot program. Of the 3,939 sampled I-9 forms, only 1 percent of employees with hire dates before the employer’s enrollment in the Basic Pilot program were verified with the Basic Pilot system (i.e., matched to the transaction database). Of those employees, 45 percent had been hired 1 to 3 months before employer enrollment in the program and 33 percent had been hired more than 3 months before employer enrollment. Review of the I-9 forms for employees hired 1 or more months before the employer enrollment date suggests that most of these employers had used the Basic Pilot system to verify someone rehired after the original date of hire or to re-verify someone whose documents had expired. While

⁷⁵ Forty-three percent of employees interviewed were verified by temporary employment agencies or help-supply services.

⁷⁶ These percentages are based on a sample of 3,864 I-9 forms – 2,933 matched to the Basic Pilot transaction database and 931 not matched – selected during on-site visits.

the MOU clearly states that the system should not be used to verify workers who are rehired or renew their documents, rehired workers might be verified inadvertently if they completed a new I-9 form and the employee performing the verification was unaware that the worker was being rehired.

3. PROCEDURES FOR HANDLING TENTATIVE NONCONFIRMATION CASES

The Basic Pilot procedures for handling tentative nonconfirmation cases were designed to protect employee rights by giving employees an opportunity to resolve problems that may have incorrectly led to a “tentative nonconfirmation.” The Basic Pilot requires the following procedures in cases of tentative nonconfirmation:

- The employee must be informed (in writing) of the finding and of his/her right to contest it.
- An employee who decides to contest the finding must be given an SSA or INS referral letter by the employer.
- The employee must be given sufficient time to contact the appropriate agency.
- While the employee is contesting the tentative nonconfirmation, he/she must not be fired or otherwise treated differently from other employees.

This section examines the extent to which pilot employers adhered to these requirements and discusses services provided by some employers that go beyond those required by the Basic Pilot program.

a. NOTIFYING EMPLOYEES OF WORK-AUTHORIZATION PROBLEMS

Notifying employees who receive a tentative nonconfirmation that cannot be resolved by correcting keying errors is critical from the perspective of employee rights, because tentative nonconfirmations may be due to inaccuracies in Federal records.⁷⁷ However, employers do not always inform employees of their rights.

Employers may fail to inform employees of a tentative nonconfirmation for a variety of reasons, some of which are innocuous from the employee’s viewpoint and some of which are not. In some cases, the employer finds an input error. In this situation, the employer should close the case as an invalid query and enter the correct data. If, however, the employer fails to close the initial case properly, the case may appear on the transaction database as two separate cases – a final nonconfirmation case and an authorized case.⁷⁸ This situation would not result in any harm to the employee.

⁷⁷ Federal records may be inaccurate, for example, because the employee has not informed SSA about a name change or because of lags in the updating of INS records.

⁷⁸ The evaluation team tried to delete such duplications but may not always have been successful, since the mistake that led to the original input error may have made matching difficult.

As discussed above, some employers use the pilot system to screen job applicants. Since the employer has little incentive to inform these employees of tentative nonconfirmation findings, screened job applicants are unlikely to be notified of their findings.

Seventeen percent of pilot employers admitted in the survey that they do not encourage employees to contest nonconfirmations – either because they believe that eligibility rarely results or because contesting a tentative nonconfirmation requires too much time. These employers are not in compliance with the Basic Pilot procedures. As discussed in Chapter V, evidence from the transaction database and the employee interviews suggests that employers often fail to notify employees about their tentative nonconfirmation. Specifically, it appears that only 24 percent of the 240 employees who were hired and should have been informed of work-authorization problems were in fact informed.

The Basic Pilot procedures further require that the employer provide the employee with a printed Notice of Tentative Nonconfirmation describing employee rights, responsibilities, and procedures. A written notification ensures that the employee has been formally notified and has the necessary information to decide whether to contest the finding. Seventeen percent of pilot employers indicated that they did not always fulfill this requirement. In the employee interviews, fewer than half (44 percent) of the employees who were informed of tentative nonconfirmations remembered being shown the printed notice. Of the 67 employees who decided to clear up their work-authorization problems, only 61 percent remembered having received at least one of the Basic Pilot referral forms to visit SSA or INS. The differences in behavior reported by employers and employees may be attributable to employers' reluctance to admit that they were not following the procedures and/or to employees' forgetting that they had received a written notice.

b. ALLOWING TIME TO RESOLVE A TENTATIVE NONCONFIRMATION

Findings from the employee interviews suggest that contacting INS or SSA within the required timeframe of 8 Federal workdays is not a serious problem for most employees. Approximately 14 percent of employees who had to contact one of the agencies had a problem doing so within the required timeframe. If the employee does not take action within the 8-day timeframe, the pilot system closes the case as a final nonconfirmation, after the 10th day even though the employee may later resolve the discrepancy.

c. RESTRICTING WORK ASSIGNMENTS AND CUTTING PAY

The Basic Pilot MOU prohibits the restriction of work assignments, pay cuts, and other adverse actions against employees while they are contesting tentative nonconfirmations. However, employers do sometimes take adverse actions against employees who receive tentative nonconfirmations. Thirty percent of pilot employers reported restricting work assignments while employees contest a tentative nonconfirmation. Among the 67 employees who decided to contest a tentative nonconfirmation, 45 reported that they were not allowed to continue working while they straightened out their records, that they had their pay cut, and/or that they had their job training delayed.

d. IN-PERSON NOTIFICATION

Although they are not required to do so by the Basic Pilot program, 81 percent of employers using the Basic Pilot claimed that they always provide in-person notification of tentative nonconfirmation to their employees. One reason may be that approximately one-quarter of employees who received the form found it difficult to understand. In the employee interviews, approximately 40 percent of employees who received one of the forms reported that the employer explained it to them.

e. PROVIDING SERVICES TO EMPLOYEES

Although they are not required by the Basic Pilot program to do so, 91 percent of pilot employers reported making staff available to answer questions and help with I-9 forms. Sixty percent also claimed to provide access to office equipment such as copiers, telephones, and fax machines, and 57 percent said they provided employees with time off to resolve work-authorization problems.

Employees reported these types of employer assistance less frequently. Forty-four percent of employees who contested a tentative nonconfirmation reported being offered assistance with completing their I-9 forms, approximately one-quarter reported being offered access to communications equipment, and one-third said they were given time off from work. While employers are not required to provide these types of assistance, the findings suggest that employees often need such help to resolve their work-authorization problems.

Employers using the Basic Pilot system occasionally indicated other forms of assistance that they provide to employees, such as transportation to INS or SSA offices, interpreters for telephone calls, and contact information sheets for INS or SSA.

B. EMPLOYEE COMPLIANCE

While participation in the pilot is voluntary for employers, it is not voluntary for employees. In the verification process, employees are required to show employers valid documentation establishing identity and work authorization and to accurately complete and sign portions of the I-9 form. This section examines employee compliance with the Basic Pilot procedures, including attestation of U.S. citizenship, the use of authentic documents, and employee responsibility for maintaining accurate INS and SSA records.

1. ATTESTATION OF U.S. CITIZENSHIP

To examine the Basic Pilot's effectiveness in detecting false attestation of U.S. citizenship, the evaluation team compared citizenship attestation on the 3,864 I-9 forms sampled from pilot employers to the citizenship status on the Basic Pilot transaction database.⁷⁹ Of the 2,933 I-9 forms matched to the transaction database, close to 97

⁷⁹ This information was provided to the evaluation team by SSA and merged into the datafile.

percent show the same citizenship status as the transaction database. The 1 percent of cases where the I-9 form indicates noncitizen status and the transaction database shows U.S. citizenship are most likely employee error in checking the wrong box on the I-9 form. The 2 percent of cases where the I-9 form indicates U.S. citizenship and the transaction database shows noncitizen status includes cases of false attestation; cases where the change in citizenship status occurred before November 1980, when SSA first included information on citizenship status in its database; or errors in the SSA information.

2. USE OF AUTHENTIC DOCUMENTS

When establishing work authorization, an employee's primary responsibility is to provide the employer with valid and authentic documents that belong to him/her. Employers may not request specific documents as long as the documents the employee presents conform to the Form I-9 requirements and the "List B" documents contain a photograph.

Pilot employers reported that they encounter more fraudulent and counterfeit documents than documents that do not belong to the person presenting them (imposters). Seventy-three percent of these employers reported encountering at least some counterfeit documents in the past year, compared to 59 percent who reported seeing identity fraud. It is impossible to know whether the statistics reflect different rates of these activities or the relative difficulty of detecting identity fraud compared to detecting counterfeit documents. Only 1 percent of employees admitted to presenting a false document or a document that belonged to someone else.

3. USING OUTDATED DOCUMENTS

Outdated documents (or lapsed temporary work permits) constitute a separate class of authentic documents. Unlike employees who use falsified documentation, some employees rely on documents that have expired. The employee interviews provide limited evidence that employees use expired documents without considering themselves to be unauthorized for work. Five of the six respondents who were confirmed as unauthorized provided verbatim comments indicating that they were not authorized when they applied for the position, even though they claimed that they were work-authorized and had not presented fraudulent documents.

4. UPDATING INS AND SSA INFORMATION

Employees have a responsibility to inform INS and/or SSA of any changes to or inaccuracies in their current records. Under the Basic Pilot, it is especially important for employees to report any name changes or changes in citizenship status to SSA. Keeping SSA records up-to-date is an employee responsibility that affects pilot effectiveness, as

indicated by the fact that 92 percent of all employees who reported attempting to resolve work-authorization problems contacted SSA as part of the verification process.⁸⁰

Failure to report name changes to SSA was frequently encountered in the work-authorization process. This problem would presumably be self-correcting if the Basic Pilot program were to be instituted on a larger scale. The greater use of the Social Security number for verification purposes would likely make employees more aware of the need to notify SSA of name changes and to ensure that compound or hyphenated names are correct in the SSA records. Further, once the name change was made, it would be on the database for any future verification.

The automated verification system could conceivably be improved to alleviate problems related to the failure to update SSA records. The system could be programmed to notify the employer when the Form I-9 information is consistent with all Federal information except the last name. The employer could then resubmit the information with the employee's former name (assuming that the person has the appropriate documentation) or reversing the order of a hyphenated name. If the revised entry proved the person to be work-authorized, the employer could consider the employee authorized and inform him/her to notify SSA in order to avoid payroll reporting and verification problems in the future.

C. SSA AND INS PERFORMANCE

Successful implementation of the Basic Pilot depends as much on how well INS and SSA perform their responsibilities as on employer adherence to pilot rules. Federal agency responsibilities include maintaining accurate Federal databases, designing and maintaining an efficient automated verification system, resolving tentative nonconfirmations, providing training and technical assistance to employers, and providing assistance to employees. This section examines the extent to which the standards are being met.

1. ACCURACY OF SSA AND INS DATABASES

One issue stressed in the November 1998 workshop on the Employment Verification Pilots was the possibility that data inaccuracies and update delays in the Federal verification databases would result in incorrect nonconfirmations of work authorization.⁸¹ Even Federal statistical agencies that are attentive to data accuracy are aware of some level of inaccuracy in their databases.⁸² Indeed, the sheer volume of information collected by SSA and INS almost guarantees some inaccuracies.⁸³ Therefore, the

⁸⁰ These results are in line with the results from the transaction database. However, outcomes captured in the transaction database about SSA tentative nonconfirmation are not specific enough to determine a reason for the visits to SSA.

⁸¹ Institute for Survey Research, 1999.

⁸² Salvucci et al., 1995; Triplett, 1991; White, 1993.

⁸³ Biemer, 1985.

evaluation team asked Federal officials several related questions: How severe is the problem of database inaccuracy? How could such problems be reduced if the program were to be implemented on a larger scale? What would the resolution of database inaccuracy cost?

Most Federal officials interviewed agreed that the efficient operation of the pilot program was hindered by inaccuracies and outdated information in the INS database. One major contributory problem identified by INS officials is frequent delays in entering data for persons recently issued employment authorization documents (EADs) and for new immigrants and refugees.⁸⁴ As a result, they said, the pilots must rely on Immigration Status Verifiers (ISVs) to resolve the status of cases that are not confirmed through the automated system. Not only is status verification expensive, it also requires that ISVs make a number of subjective decisions. Error can result, as demonstrated by contradictory results found in the Basic Pilot transaction database when employers submitted a case more than once.

The concern about database accuracy was shared by many of the Federal officials interviewed. The consensus among Federal respondents was that the databases must be kept up-to-date if the pilots are to be successful. The delay in entering data into an electronic system “is a big problem for us at INS,” said one official. Another problem officials noted was that individuals change their names but do not have to report the name change to INS. Although INS officials have been working to solve the problems of time lags in entering information into the INS Central Index System database – and the existence of other inaccuracies in the data – resolution is likely to be both expensive and time consuming.

It is interesting that the most common employer concern about the pilot system was the reliability of the SSA and INS databases (mentioned by 27 percent of respondents). Employers who had actually used the system expressed concern about database reliability more often than those who had not. Since employer doubt about database accuracy prior to adopting the Basic Pilot program may have contributed to their decision not to use the database, a greater concern about accuracy among users suggests that they are reacting to their experiences with the system.

It is also interesting that most employees who tried to resolve work-authorization problems found that INS and SSA had the correct information on file, even though the database information was presumably incorrect. Only 16 percent of employees who contacted SSA to resolve work-authorization problems said that the information on file at SSA was incorrect, while 4 percent of those who contacted INS said that the information on file was incorrect.⁸⁵

⁸⁴ As of 2001 and early 2002, INS had made huge improvements in the timeliness of data input for new immigrants and refugees.

⁸⁵ The information on file at INS is not necessarily the same as what is on the INS electronic database system, since these databases are not always up-to-date.

If information returned by the system is not accurate, complete, and up-to-date, employment may be lost by authorized employees who decide not to resolve discrepancies. Further, delays in verification as a result of out-of-date data can lead to reductions in employee morale and efficiency.

Whenever government databases are inaccurate and outdated, the greatest burden falls on employees. Without reliable data with which to immediately determine work authorization, employees may be penalized by employers who are unsure of their work status. This issue is discussed in more detail in Chapter VIII.

Problems with the timeliness of INS data entry result in part from large increases in workload when new groups of noncitizens become eligible to work in the United States as a result of legislative and administrative actions. Requests to INS for work-authorization documents have more than doubled in the past 8 years. INS is implementing both policy and operational changes to significantly reduce the delay between work authorization and the time when the information is entered into the INS database and INS documentation is issued. Although some improvements have been made since the pilot evaluation concluded, others will take longer to implement.

2. DESIGNING AN EFFICIENT AUTOMATED VERIFICATION SYSTEM

To some extent, avoiding data entry problems is the responsibility of employers and of the employees who provide them with information. However, system design, which is a Federal responsibility, can affect how error-prone the data entry system is. A significant improvement resulted with the elimination of telephone data entry with the Basic Pilot Integrated system. Other enhancements to the system, such as redesign of the data entry screen, could further improve data entry accuracy, by introducing data checks that reduce the occurrence of common mistakes. Approximately one-third of employers using the pilot system reported that it is easy to make errors when entering information. The result can be an incorrect tentative nonconfirmation. The implications of such false-negative results depend on how employers handle such situations. If they check for and correct data entry errors, the problem is one of employer burden for checking and re-keying. However, if an employer does not catch an error, the result could conceivably be more significant burden on employees, employers, and the Federal Government.

For entries to the Basic Pilot Integrated system, an employer who makes a data entry mistake can close the erroneous transaction as an *invalid query*.⁸⁶ Five percent of cases entered into the Basic Pilot Integrated system were closed with this code. However, the actual percentage of operator error cases is presumably higher, because employers do not close all cases as they should and some data entry errors are not resolved until after the employee contacts INS or SSA.

Federal officials pointed out that nonconfirmation often results from employer data entry problems. For example, as one official commented, "There are a substantial number of

⁸⁶ This code was not available in the original Basic Pilot system.

errors because of not using the system correctly and data entry errors.” A recent, unpublished, informal INS survey indicates that approximately 20 percent of employees who faxed or visited an INS status verification office did so because of employer input errors that were not identified and rectified by the employer.⁸⁷

Some INS and SSA program officials believe that many users have trouble with the system. Said one: “They’ll call us and ask how they should do something...and we say, ‘That’s in the manual.’ So I think they’ve forgotten or haven’t read it.” A specific employer data entry problem noted by some Federal respondents is the difficulty of entering compound surnames: “Our employers are simply not questioning – should that be part of your last name?” The problem is especially likely to arise with certain foreign-born employees and could contribute to the much higher error rate observed among these employees. In addition to the possibility of solving the problem with additional employer training, the software might be modified to check Federal records to determine whether the entered Social Security number or Alien Number has been issued to someone with a compound name containing the name in question. The evaluation team believes that modifying the system to incorporate such checks would improve the user friendliness of the Basic Pilot system and make it less error prone.

3. RESOLVING TENTATIVE NONCONFIRMATIONS WITHIN THE TIME LIMITS

The MOU signed by INS and employers allows INS and SSA each 10 Federal working days (approximately 14 calendar days) from the date of employee referral to resolve tentative nonconfirmations. Provisions are made for cases requiring more time for resolution.

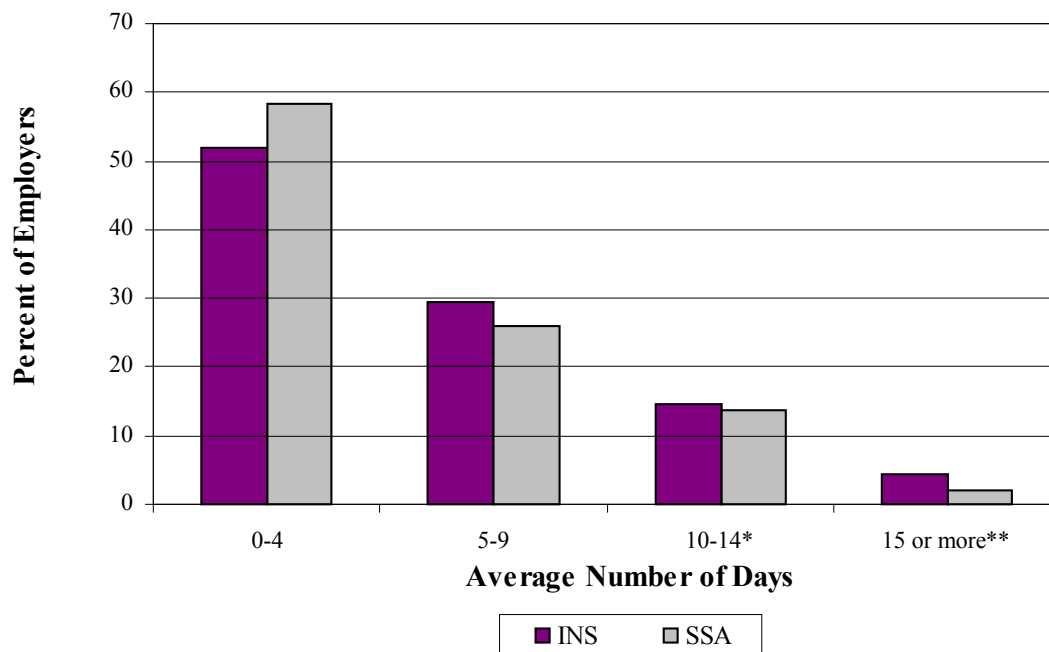
All employers using the pilot system were asked about the number of days, on average, it had taken INS and SSA to resolve a tentative nonconfirmation in the past 6 months. Approximately half of pilot users reported that INS and SSA took 1 to 4 calendar days, on average, to resolve a tentative nonconfirmation. Four percent reported that INS took an average of 15 or more days to resolve a tentative nonconfirmation, and only 2 percent said that SSA took an average of 15 days or more to resolve a tentative nonconfirmation (Exhibit VII-2). However, even if the delay is attributable to Federal processing delays, after 10 workdays the pilot system automatically closes INS cases in progress as “No Shows.”⁸⁸ Since the Basic Pilot system does not have provisions for overwriting this final decision, some of the apparent final nonconfirmation cases may have been authorized by the Federal Government after the final nonconfirmation finding was issued.⁸⁹

⁸⁷ See Chapter V for additional evidence of employer errors in entering the Alien Number and the consequences of these errors.

⁸⁸ Note that 10 workdays is the equivalent of 10 to 14 calendar days. Employers have the option to reopen a case if they want to pursue it further.

⁸⁹ Discussions with the ISVs indicate that they also sometimes change their findings after the 10-day period because of calls from employers, but these resolutions do not appear on the database available for this study.

Exhibit VII-2: Average Number of Days* SSA and INS Took to Complete Confirmation



* Ten to 14 days is equivalent to the 10 Federal working days allowed to complete confirmation according to the terms of the Memorandum of Understanding.

** Differences are significant at the 0.05 level.

SOURCE: Employer Mail Survey

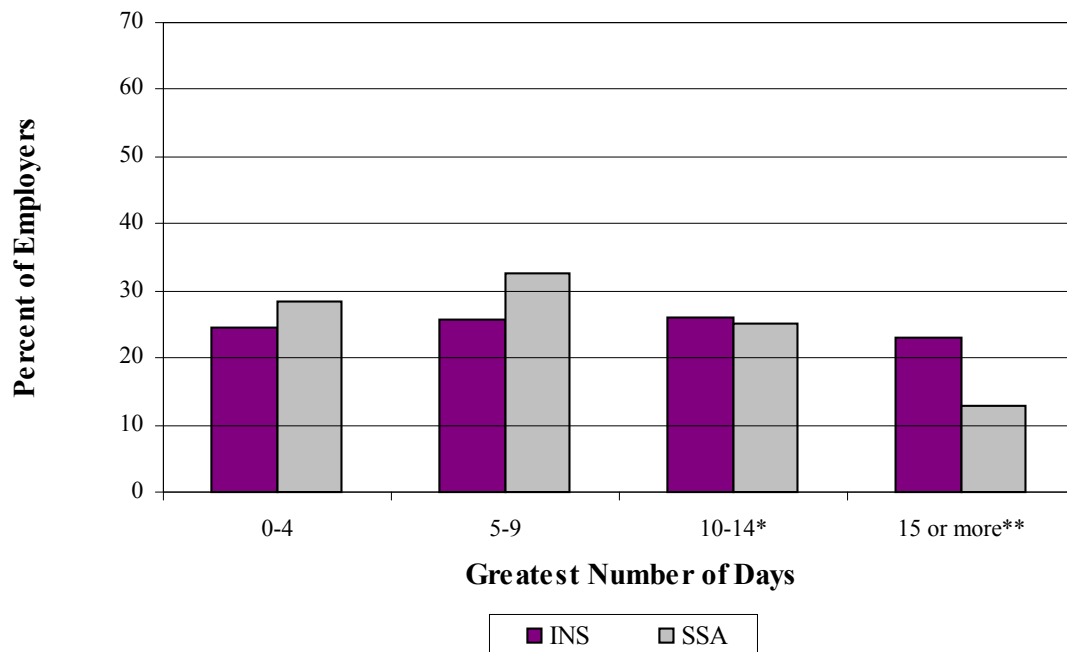
Pilot employers were also asked about the longest time that SSA or INS took to respond to a case. The majority of system users reported the longest time to be less than 15 days. However, almost one-quarter of respondents reported the longest period to be 15 or more days for INS, compared to 14 percent who reported the same period for SSA (Exhibit VII-3).

Based on these results, it appears that INS and SSA usually meet their 10 Federal-working-day deadline for resolving tentative nonconfirmation cases; however, in some cases, INS and SSA have not been able to meet this deadline.⁹⁰ Given that many employers screen job applicants, and that a substantial number of employers take adverse actions against employees while they are awaiting confirmation, improvement in these results is highly desirable.

A common complaint from large employers about the Basic Pilot is that, because of the large volume of employees they hire, they find it difficult to meet the statutory deadline of verifying all new employees within 3 days of hire. Some employers commented on their fear of repercussions from INS if they miss this deadline.

⁹⁰ Because of the wording of the employer survey questions, it is not possible to precisely estimate how successful INS and SSA have been in meeting this requirement.

Exhibit VII-3: Longest Period Reported for SSA and INS to Complete Verification



* Except for holiday periods, 14 days is equivalent to the 10 Federal working days allowed to complete confirmation according to the terms of the Memorandum of Understanding.

** Differences are significant at the 0.05 level.

SOURCE: Employer Mail Survey

4. TRAINING PROVIDED TO EMPLOYERS

If employers are adequately trained, they are more likely to follow all procedures, including using the pilot systems correctly, conducting pilot verification procedures accurately, and, therefore, protecting employee rights. More than 79 percent of pilot users were self-instructed in the Basic Pilot program using the manual INS provided, and 18 percent used the Computer-Based Training (CBT) tutorial. Another 19 percent received formal in-house training conducted by the employer, and 7 percent received formal training from SSA or INS⁹¹ (Exhibit VII-4).

⁹¹ Formal training by INS refers to the training delivered when employers began in either the Employment Verification Pilot or the Joint Employment Verification Pilot, since the Basic Pilot program did not include any formal on-site training for participating employers.

Exhibit VII-4: Type of Training Received by Basic Pilot Users

Training Method	Percent of Employers
Self-instruction with manual	79
Informal on-the-job training	35
Computer tutorial	27
Formal in-house training session	19
Formal training by INS or SSA	7
Other	3

NOTE: Percentages will not add to 100 because employers could provide more than one response.

SOURCE: Employer Mail Survey

For the most part, pilot users found the INS training materials useful. More than 96 percent found the Basic Pilot manual and the Basic Pilot Integrated manual useful. The CBT was also perceived as useful by almost 90 percent of pilot users.

During the early pilots (i.e., the Employment Verification Pilot and the Joint Employment Verification Pilot), INS officials conducted employer training in person. With the growth of the program beginning with the implementation of the Basic Pilot, and improvements in training technology, training was conducted by means of the CBT, developed by INS. An INS contractor was available by telephone to resolve problems if the system failed or if users were having difficulties.

The evaluation team reviewed the CBT and documented recommendations for improvement. The CBT was found to be user friendly and a valuable training tool to complement the procedures manual.

Most of the Federal officials interviewed praised the CBT, although some expressed concerns. Several pointed out the CBT's completeness: "If they go through that process, they should understand about the Form I-9 law and the policies and procedures for the program." After the Basic Pilot and the CBT were launched, the manual was cut back significantly: "We really trimmed all the fat off so it wouldn't be a burden to read it. We have it down to the basics they really need to know."

However, the most pervasive training-related concern identified by INS and SSA staff is the turnover among the employer human resources staff who conduct verifications. As one INS official commented, "I think a huge challenge with the pilots is the 'human factor' aspect of verification. How do you train people effectively? We can train all sorts of colleagues, but these people are in business and not adjunct to us. Employers go on vacation, they get confused, they don't pay attention, and there are language problems. Often it is not the trainee we trained who does the work."

As with all such training, it is impossible to gauge the extent to which a trainee fully understands the material and to what extent he/she is able to apply it correctly. Officials from the Department of Justice's Office of Special Counsel for Immigration-Related

Unfair Employment Practices had the following to say: “There is a tutorial, but there is nothing to assure that the employer understands the tutorial or that [new] staff will understand the tutorial or do it right.”

5. TECHNICAL ASSISTANCE TO EMPLOYERS

Successful implementation of the pilot program depends on both INS and SSA being responsive to employer needs. The employer survey indicates that most pilot participants found INS and SSA to be responsive.

Program officials see the technical support offered to employers as a strong feature of the program.⁹² The following comment about the technical support provided to pilot employers is typical of the views expressed by Federal officials: “What can be more of service than having a number on which you actually reach a human being, unless you have someone come over and sit with you? The materials come with an 800 number at INS and at SSA for technical support.”

Pilot users reported both positive and negative experiences in their in-person dealings with SSA and INS:

- Approximately 80 percent of users reported that they were always or often able to receive assistance from INS and SSA in resolving technical problems, but the other 20 percent said that SSA or INS never or only sometimes assisted them.
- More than 85 percent of pilot users claimed that SSA and INS staff members were always or often polite.

The most serious concern identified by the employers surveyed is the promptness with which agency staff returned telephone calls. Only 61 percent of employers reported that SSA always or often returned their calls promptly, and 57 percent reported a similar experience with INS. This weakness is of particular concern for an expanded implementation of the pilots.

6. CUSTOMER SERVICE TO EMPLOYEES

Some stakeholders have expressed concern that dealing with INS and SSA to resolve tentative nonconfirmations could be unreasonably burdensome for employees. Therefore, employees who contacted SSA and INS to resolve work-authorization problems were questioned about their experiences.

a. SATISFACTION WHEN CONTACTING SSA AND INS

The Basic Pilot procedures specify that employees who are required to contact SSA must do so by visiting a local SSA office. They may fax or telephone INS to resolve problems, or they may visit INS in person. Based on information from the employee interviews, 3

⁹² An INS contractor handles requests for technical support, while policy questions are forwarded to INS.

percent of employees contacted SSA and fewer than 1 percent contacted INS by telephone or fax or in person.

The estimates regarding employee experiences with SSA or INS are based on interviews with the 67 employees who contacted either of the agencies.⁹³ Eighty-five percent of the pilot employees who went to SSA were able to resolve their work-authorization problem on their first visit. Ninety percent of employees who called INS reported being able to resolve their work-authorization problem over the telephone. Of employees who chose to contact INS in person, 78 percent were able to resolve their work-authorization problem on their first visit.

Employees who contacted a local SSA or INS office generally provided positive feedback about their experience (Exhibit VII-5):

- Ninety-five percent of the employees who visited SSA said that the staff was able to resolve their work-authorization problem in a timely and efficient manner.
- Almost 90 percent of employees reported a similarly positive experience at INS.⁹⁴
- Eighty-five percent of employees said they resolved their problem on their first visit to SSA, whereas 78 percent resolved it on their first contact with INS. Most importantly, the majority said that the information on file was correct at INS (94 percent) and at SSA (84 percent).
- Approximately 95 percent of employees said that SSA and INS provided them with assistance in a language they could understand.
- Nearly all employees agreed that the office hours were convenient at INS (98 percent) and SSA (92 percent).
- Approximately 95 percent of employees said the INS staff was helpful and polite. Ninety-one percent found the SSA staff helpful and 83 percent found SSA staff to be polite.

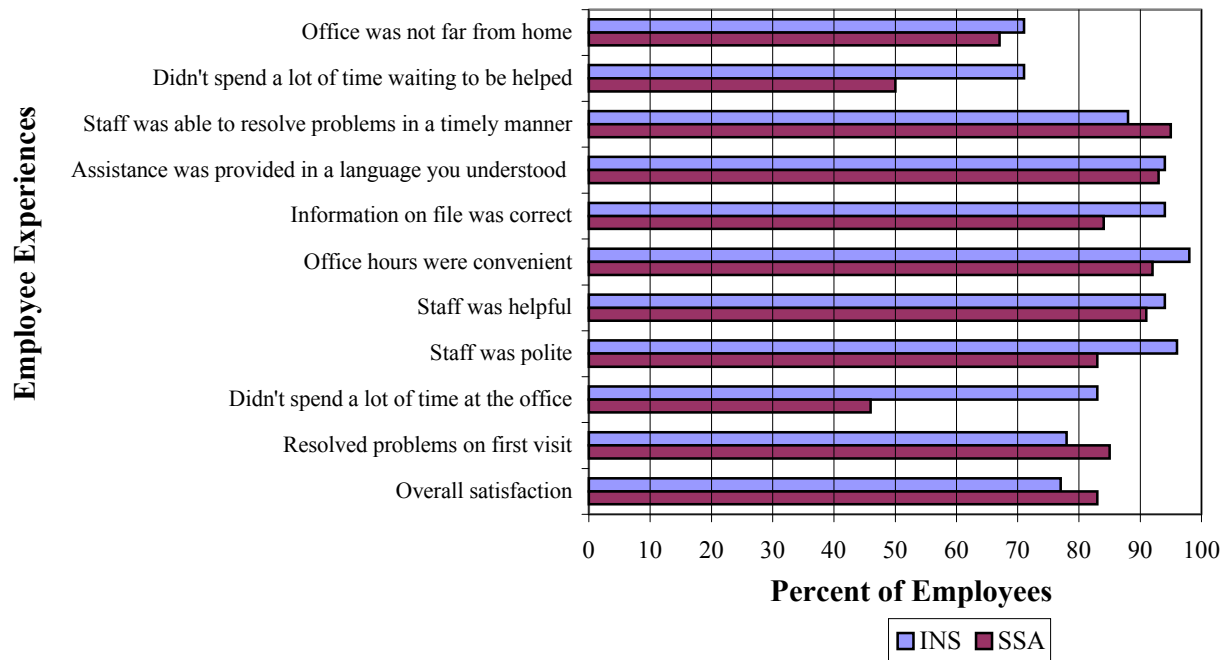
Employees were equally satisfied with services provided over the telephone and by fax:

- Ninety-four percent of employees who contacted INS by telephone were satisfied with their experience using the telephone services.
- Ninety-two percent of employees said that INS returned telephone calls promptly.

⁹³ This is a very small sample and results must be interpreted cautiously.

⁹⁴ Although the Basic Pilot does not require in-person visits to a local INS office, some employees choose to resolve their work-authorization problems in person.

Exhibit VII-5: Employee Characterization of Experiences with INS and SSA



SOURCE: Employee Interviews

b. DISSATISFACTION WITH SSA AND INS VISITS

Although employee comments about INS and SSA were generally positive, there were several areas in which the Federal Government could improve, according to many employees:

- Thirty-two percent of pilot employees who contacted INS by fax, and 23 percent who visited INS, were not satisfied with their experience.
- Almost 30 percent of employees who visited a local SSA or INS office considered it to be far from their home. These employees had to travel an average of 17 miles to an SSA office and 85 miles to an INS office.
- Forty-six percent of employees who visited a local SSA office reported spending a long time there, while 16 percent of employees visiting an INS office reported spending a long time. These employees waited an average of 87 minutes at SSA and 220 minutes at INS.⁹⁵

⁹⁵ These times are not necessarily indicative of normal waits at the INS and SSA offices, since pilot employees were supposed to receive expedited service.

c. LOSS OF ORIGINAL DOCUMENTS AT SSA OR INS

A concern expressed by stakeholders was that, in the process of clearing up work-authorization problems, pilot employees might have to surrender original documents that could be misplaced by INS or SSA. Only one of the employees who visited SSA said that his/her original documents were lost or misplaced; no employees reported that INS lost or misplaced any original documents. This result suggests that loss of documents is a rare occurrence.

d. COST AND BURDEN OF RESOLVING WORK-AUTHORIZATION PROBLEMS

Exhibit VII-6 illustrates employees' perceptions about the costs and burdens they incurred in order to resolve work-authorization problems. Many employees who visited INS spoke about costs related to the annual renewal of their EADs.⁹⁶ Therefore, it is difficult to discern what costs employees incurred that were directly related to the Basic Pilot.

Exhibit VII-6: Pilot Employee Costs and Burdens to Resolve Tentative Nonconfirmations with SSA and INS

Employee Views	Percent of Employees
Not paid for time missed at work	75
Spent personal time	49
Missed time at work	34
Job training delayed	29
Cut in pay	18
Difficult because of other life responsibilities	14
Spent money	7

NOTE: Percentages will not add to 100 because employees could provide more than one response.

SOURCE: Employee Interviews

However, from the responses received, the evaluation team can report that among employees who contacted SSA or INS, 7 percent said they spent money to resolve work-authorization problems, 49 percent spent personal time, and 14 percent found the resolution of work-authorization problems difficult because of life responsibilities. Eighteen percent reported a cut in pay during the work-authorization process, 29 percent had their job training delayed, and 34 percent missed time at work without pay.

⁹⁶ EAD renewal cost \$100 per person.

D. SUMMARY

Based on the data sources analyzed, the majority of employers appear to be in compliance with the Basic Pilot procedures specified in the MOU. However, the evaluation team found considerable evidence of noncompliance with MOU procedures that specifically prohibit screening job applicants and taking actions that adversely affect employees while they are resolving problems with work authorization. Although employer actions can be explained from the perspective of cost, they represent violations of employee rights.

Employees have fewer rules to follow in the Basic Pilot program than do employers. The primary ones are to provide the employer with accurate information needed to determine authorization status and to keep their SSA records up-to-date. This chapter presented evidence that employees do not always follow these requirements.

Finally, INS and SSA have explicit and implicit responsibilities for the Basic Pilot program. Although they have been doing a highly satisfactory job in meeting this responsibility in many ways, there is considerable need for improvement, especially in the area of ensuring that the INS and SSA databases are kept up-to-date and accurate.

